



POLICE DEPARTMENT

January 19, 2010

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Christopher Farrell  
Tax Registry No. 886850  
44 Precinct  
Disciplinary Case No. 83773/08  
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The above-named member of the Department appeared before me on October 23, 2009, charged with the following:

1. Said Lieutenant Christopher Farrell, while assigned to the Internal Affairs Bureau, on or about and between March 14, 2006 and about September 3, 2007, on approximately fifty-six (56) occasions, wrongfully and without just cause made or caused to be made false entries, or omitted making accurate entries, in Department records falsely indicating when said Lieutenant arrived to work. (*As amended*)

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL  
GENERAL REGULATIONS

2. Said Lieutenant Christopher Farrell, assigned as indicated in Specification #1, on or about the dates indicated in Specification #1, on approximately fifty-six (56) occasions, was improperly late for his scheduled tour of duty, totaling approximately twenty (20) hours for which said Lieutenant improperly was paid. (*As amended*)

P.G. 203-05, Page 1, Paragraph 1 & 2 – PERFORMANCE ON DUTY  
GENERAL REGULATIONS

3. Said Lieutenant Christopher Farrell, assigned as indicated in Specification #1, on or about the dates indicated in Specification #1, on approximately fifty-six (56) occasions, having been improperly late to work for his scheduled tour of duty, did fail and neglect to submit Leave of Absence Reports (PD433-041) for said unauthorized absences, as required. (*As amended*)

P.G. 203-20, Page 1, Paragraph 20 – AUTHORIZED LEAVE  
GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner' review.

### DECISION

The Respondent is found Guilty in part.

### SUMMARY OF EVIDENCE PRESENTED

#### Introduction

It is not disputed that during the period from March 14, 2006 to September 3, 2007, the Respondent resided in [REDACTED], New York, which is located within [REDACTED]; that he was assigned to Internal Affairs Bureau Group 9 Night Watch; and that he commuted from his residence to his work location at 315 Hudson Street, Manhattan in a Department-rented car.

#### The Department's Case

The Department called Detective Leonid Rashkovsky as its only witness.

Detective Leonid Rashkovsky

Detective Leonid Rashkovsky, who is assigned to the Internal Affairs Bureau's (IAB) Special Investigations Unit (SIU), testified that this investigation was opened after IAB received an anonymous letter alleging that the Respondent and other members of the service (MOS) assigned to Group 9 had been misusing Department time by arriving late for work at 315 Hudson Street but signing the Group 9 command log as if they had arrived and signed in on time for the commencement of their tours.

Rashkovsky testified that before he was assigned to this investigation on October 2, 2007, the previous investigator had attempted to obtain Group 9 logs for the period February 1, 2006 to May 1, 2007, but that the logs covering this period could not be located. Logs for the period from May 13, 2007 until September 3, 2007, were reviewed as were adjusted roll calls for the period February 1, 2006 to May 1, 2007. Detective Vincent Billisi was the Group 9 MOS who was assigned to adjust roll calls if the Group 9 command log showed a sign-in time that varied with a scheduled commencement of a tour or if the tour of duty of a Group 9 MOS was changed.

Rashkovsky also reviewed E-Z Pass records regarding the E-Z Pass possessed by the Respondent. Rashkovsky also obtained 18 Overtime (OT) Reports (Court Exhibit [CX] 1) that the Respondent had prepared seeking approval to receive cash OT from March, 2006 to September, 2007.

Rashkovsky determined that the distance from the Yonkers toll plaza to 315 Hudson Street, Manhattan by car is approximately 25.5 miles. Rashkovsky used his computer to access the internet search engine "Google." According to "Google," it takes an average time of 35 minutes to drive from the Yonkers toll plaza to 315 Hudson Street,

Manhattan. When Rashkovsky was asked if this "Google" average time accounted for the time of day that the trip took place, he answered, "I don't believe so. I think they just take the average."

Lieutenant Paul Smith, assigned to SIU, conducted one timed run by driving from the Yonkers toll plaza to 315 Hudson Street during the same time period that the Respondent would have been commuting to work which was between 2200 hours and midnight. Smith drove in a safe manner staying within posted speed limits. Smith informed Rashkovsky that his trip took 30 minutes.

Rashkovsky then prepared a 74 line spreadsheet (Department Exhibit [DX] 1) detailing 73 dates during the period from March 14, 2006 through September 3, 2007. On this spreadsheet he created six columns listing: the date and commencement of tour times for the Respondent's scheduled tours (taken from the adjusted roll calls, command logs and the OT Reports); the time-of-day information contained in the E-Z Pass records for each date that the Respondent's car had Passed through the Yonkers toll plaza; a "discrepancy in minutes" number (based on Smith's 30 minute trip time) between the commencement of the Respondent's tour and the time that Respondent's car had Passed through the Yonkers toll plaza. The final column delineated the number of hours of OT the Respondent had asserted that he had worked on the 18 OT Reports he submitted between March 28, 2006 and August 7, 2007.

Rashkovsky also reviewed the Respondent's "time records reports" to determine whether he had submitted UF 28s or Leave of Absence Reports (PD433-041) for any of dates cited in the spreadsheet (DX 1). Rashkovsky found none.

On cross-examination, Rashkovsky confirmed that there were three subjects of his investigation: Captain Timothy McCarthy, Sergeant Thomas Meehan, and the Respondent. Rashkovsky recalled that he had substantiated charges of being late and failure to supervise regarding McCarthy, who signed a Schedule A Command Discipline (CD) and forfeited two vacation days. Meehan signed a Schedule B CD and forfeited five vacation days for being late for work on 34 occasions for a total of seven hours and 35 minutes late for work. When Rashkovsky was asked whether Lieutenant Matthew Markowitz had also been a subject of his investigation, he answered that he was not familiar with his case.

When Rashkovsky was asked if the speedometer and the odometer inside Smith's car were calibrated before he made his drive from the Yonkers toll plaza to 315 Hudson Street and what clock Smith had used to time the trip, Rashkovsky responded, "I don't know." Rashkovsky conceded that Smith had made only one timed trip. Rashkovsky confirmed that at his official Department interview the Respondent had stated that driving from the Yonkers toll plaza to 315 Hudson Street took approximately 25 minutes.

Rashkovsky testified that, because SIU was unable to locate command logs covering the period February, 2006 to May, 2007, to determine what time the Respondent had signed in on dates during that period of time, he relied solely on adjusted roll calls prepared by Detective Billisi, who was responsible for adjusted roll calls.

Rashkovsky acknowledged that in reviewing the Respondent's time records he saw that on a number of occasions the records indicated that although the Respondent had worked past the end of his tour of duty, he had not submitted a request to receive OT.



The Respondent's Case

The Respondent called retired Deputy Inspector Brian O'Neill as a witness and testified in his own behalf.

Deputy Inspector Brian O'Neill

Deputy Inspector Brian O'Neill, a MOS for over forty years who retired in June, 2007, testified that when he served as commanding officer (CO), Group 9, from 1994 until his retirement he "was not that critical about what time" MOS assigned to Group 9 started and that he had a standing policy that if a MOS assigned to Group 9 arrived late for work, the MOS had "the option of either putting in a slip for 28 for lost time or they could extend their tour and work past it to make up the time."

He recalled that he supervised the Respondent for about four years and he had no integrity problems regarding the Respondent's use of time, his record keeping, or any disciplinary problems. He considered the Respondent an outstanding supervisor when compared to other Group 9 supervisors.

On cross-examination, O'Neill confirmed that he went on pre-retirement leave in April, 2006. He testified that he never had any problems with Detective Billisi's adjusted roll calls but that he "never actually looked at his adjusted roll calls." He stated that he did not know whether his replacement, Captain Timothy McCarthy, continued his policy of allowing MOS assigned to Group 9 who arrived late for work the option of extending their tour to make up the time.

The Respondent

The Respondent, who was assigned to IAB Group 9 in July, 2002, testified that he commuted to 315 Hudson Street from his residence either by driving over the George Washington Bridge and down the west side of Manhattan, or by driving down the New York State Thruway and Passing through the Yonkers toll plaza. He did not use his Department-issued E-Z Pass at the Yonkers toll plaza. Rather, in compliance with Department regulations, he only used his personal E-Z Pass. He estimated that he has made the trip from the Yonkers toll plaza to 315 Hudson Street 500 times and that while he sometimes can drive it in 20 minutes it usually takes about 25 minutes. The Respondent testified that he was regularly able to pull up and park in a Department designated spot in front of 315 Hudson Street and immediately enter the building. He recalled that "a majority of the time" he would go directly to the command center before he signed his name and arrival time in the log. The Respondent testified that even if traffic was light, as it usually was at night, and weather and road conditions were very good, there is no way that he would be able to arrive at 315 Hudson Street less than 20 minutes after his car had Passed through the Yonkers toll plaza.

The Respondent testified that he did not review or sign adjusted roll calls. When he was first assigned to IAB Group 9 in July, 2002, Deputy Inspector O'Neill explained to him that if he arrived 15 minutes or less late for work, as long as it was not habitual, he had the option of either submitting a UF 28 or he could extend his tour by working past the end of his tour the number of minutes that he had been late in arriving. The Respondent recalled that "on occasion" when he had worked past the end of his scheduled tour he did not submit a request to receive OT. He received a perfect

attendance award for 15 years. In February, 2008, he was transferred from IAB to Patrol Bureau Bronx.

On cross-examination, he testified that on those occasions when he arrived at 315 Hudson Street and went directly to the command center and spent time there, when he subsequently signed his name and arrival time in the log, he would enter the time that he had entered the command center. The Respondent conceded that even if traffic was light and weather and road conditions were good, for him to be able to arrive at 315 Hudson Street 20 minutes after his car Passed through the Yonkers toll plaza, he would have to drive at an average a rate of speed of 62 miles per hour. He acknowledged that no road that he took from the Yonkers toll plaza to 315 Hudson Street had a posted speed limit of 60 miles per hour, although he could have legally driven at a speed of 55 miles per hour.

### FINDINGS & ANALYSIS

It is charged that on 56 occasions between March 14, 2006 and September 3, 2007, the Respondent made false entries in the Group 9 sign-in log as to what time he had arrived for his tour of duty at 315 Hudson Street; that he was late for his scheduled tour of duty on these 56 occasions; and that he failed to submit Leave of Absence Reports (PD433-041) regarding these 56 unauthorized latenesses.

### E-Z Pass Records

I credit Detective Rashkovsky's testimony that he accurately recorded on his spreadsheet (DX 1) the date and time-of-day information contained in E-Z Pass records he obtained which specified the time that the Respondent's car Passed through the



Yonkers toll plaza on the 56 charged dates. The Respondent did not offer any evidence to challenge the presumed accuracy of the time-of-day information recorded by the electronic E-Z Pass reader at the Yonkers toll plaza which produced the vehicle-Pass-through-times contained on the E-Z Pass records that Rashkovsky reviewed.<sup>1</sup>

#### Driving Time from Yonkers Toll Plaza to 315 Hudson Street

More problematic to determining what time the Respondent actually arrived at work on the 56 charged dates is the question of how much time it took the Respondent to drive from the Yonkers toll plaza to 315 Hudson Street on those 56 occasions.

Rashkovsky's testimony that according to "Google" it takes 35 minutes to drive from the Yonkers toll plaza to 315 Hudson Street does not constitute reliable hearsay since it is unknown when, how and by whom at Google this time figure was obtained. Thus, the Google time estimate constitutes no more than unattributed hearsay.

Lieutenant Smith's statement to Rashkovsky that it took him 30 minutes to drive from the Yonkers toll plaza to 315 Hudson Street constitutes reliable hearsay. However, Smith came up with this 30 minute figure after making only one trip, while driving strictly within posted speed limits, and the accuracy of the clock, speedometer and odometer inside Smith's car was not established.

Since the Respondent has driven from the Yonkers toll plaza to 315 Hudson Street about 500 times, he was far more familiar with this route than Smith and since it would be far from surprising if he regularly drove at 60 m.p.h., a speed which exceeded

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<sup>1</sup> Information from E-Z Pass records has been admitted into evidence to prove that a vehicle Passed through a toll plaza at a certain time based solely on the testimony of the Department investigator who examined the E-Z Pass records. See Disciplinary Case No. 81292/05 (approved on September 5, 2008).

posted speed limits by only five m.p.h., the Respondent could quite conceivably, as he claimed, have regularly shaved five or more minutes off of Smith's 30 minute trip time.

Also, the Department did not dispute the Respondent's contention that he was regularly able to park his car and enter his workplace in a matter of seconds because he was authorized to park in a Department designated spot right in front of 315 Hudson Street.

Since the Respondent acknowledged that, under any circumstances, it would have been impossible for him to arrive at 315 Hudson Street less than 20 minutes from the time his vehicle Passed through the Yonkers toll plaza, a 20 minute trip time period would appear to be the fairest time standard to apply here.

#### Departmental Records Documenting the Respondent's Arrival Times

The final factor to be examined in determining what time the Respondent actually arrived at work on the 56 charged dates is the Departmental documentation which memorializes the Respondent's arrival times. Based on the documentary and testimonial evidence, or lack therefore, adduced at this trial relating to when the Respondent started his tours of duty, I find that the charged time period of March 14, 2006 to September 3, 2007, must for purposes of analysis be divided into two segments: The period March 14, 2006 to May 13, 2007; and the period May 13, 2007 to September 3, 2007.

#### March 14, 2006 to May 13, 2007

Rashkovsky testified that since SIU was unable to locate command logs covering the period between March 14, 2006 and May 13, 2007, he relied solely on adjusted roll

calls to ascertain what time the Respondent had signed in for tours of duty (that did not result in post-tour OT) during this time period. It is not disputed that the Respondent did not sign or review these adjusted roll calls. I find that the accuracy of the adjusted roll calls that Rashkovsky reviewed was not sufficiently established at this trial. The Department did not call Detective Vincent Billisi, the MOS who prepared these adjusted roll calls. Retired Deputy Inspector Brian O'Neill testified that he never reviewed adjusted roll calls during the years when he was Group 9's CO and his successor, Captain McCarthy, signed a CD charging him with personal latenesses and failing to supervise subordinates. These facts raise questions about the accuracy of the adjusted roll calls that Rashkovsky reviewed.

As a result, I find that the most reliable proof regarding the sign-in times the Respondent entered in the logs during this period consists of the 15 OT Reports (CX 1) the Respondent prepared and signed for OT that he asserted he had worked on 15 dates between March 14, 2006 and May 13, 2007. Since the Respondent was seeking approval to receive cash for OT, he had an incentive to insure that the sign-in times he entered on these OT Reports matched the sign-in times he had entered in the log. Also, in his testimony regarding his records review for the period May 13, 2007 to September 3, 2007, Rashkovsky did not assert that he had found any discrepancies between the sign-in entries made by the Respondent in logs Rashkovsky reviewed for the dates of May 22, 2007, August 4, 2007, and August 7, 2007, and the sign-in times the Respondent entered on the OT Reports he submitted regarding these three dates.

On all 15 of the dates between March 14, 2006 and May 13, 2007 on which the Respondent submitted OT Reports, the difference between the time-of-day that the

Respondent's vehicle Passed through the Yonkers toll plaza and the time-of-day that the Respondent entered on his OT Report as the starting time for his tour was less than 20 minutes.

For March 28, 2006, the Respondent entered "0005" hours on his OT Report as the time he started his tour. Since the Respondent's vehicle Passed through the Yonkers toll plaza at 0005 hours that day, the Respondent could not have actually signed-in earlier than 0025 hours.

For both April 5, 2006, and July 5, 2006, the Respondent entered "2235" hours on his OT Report as the time he started his tour. Since the Respondent's vehicle Passed through the Yonkers toll plaza at 2225 hours and 2230 hours, respectively, on those days, the Respondent could not have actually started work at 2235 hours on either of those dates.

On both August 21, 2006 and October 10, 2006, the Respondent entered "2225" hours on his OT Report as the time he started his tour. Since the Respondent's vehicle Passed through the Yonkers toll plaza at 2218 hours on each of these days, the Respondent could not have arrived at work seven minutes later on either of these days.

For November 2, 2006, the Respondent entered "2240" hours on his OT Report as the time he started his tour. Since the Respondent's vehicle Passed through the Yonkers toll plaza at 2226 hours that day, the Respondent could not have signed in 14 minutes later.

For November 28, 2006, December 6, 2006, and January 27, 2007, the Respondent entered "2225" hours on his OT Reports as the time he started his tour. Since the Respondent's vehicle Passed through the Yonkers toll plaza at 2216 hours,

2224 hours, and 2221 hours, respectively, on those days, the Respondent could not have signed in at 2225 hours on any of those three days.

For March 6, 2007, the Respondent entered "2325" hours on his OT Report as the time he started his tour. Since the Respondent's vehicle did not Pass through the Yonkers toll plaza until 2337 hours that day, the Respondent could not have signed in at 2325 hours because his car had not yet Passed through the toll plaza.

For March 13, 2007, March 17, 2007, March 18, 2007, March 25, 2007, and April 21, 2007, the Respondent entered "2225" hours on his OT Reports as the time he started his tour. Since the Respondent's vehicle did not Pass through the Yonkers toll plaza until 2220 hours, 2223 hours, 2216 hours, 2222 hours and 2214 hours, respectively, on those days, the Respondent could not have signed in at 2225 hours on any of those days.

Also, it clear from the OT Reports that the Respondent did not, on any of these 15 dates, comply with Deputy Inspector O'Neill's rule that if he arrived up to 15 minutes late for work he had the option of making up his lateness by extending his regular tour past the time he was scheduled to end his tour. The OT Reports show that on all 15 dates the Respondent started earning OT as soon as his regular tour ended.

In sum, I find that on 15 occasions between March 14, 2006 and May 13, 2007, the Respondent entered an inaccurate sign-in time for the start of his tour of duty.

May 13, 2007 to September 3, 2007

With regard to this period, the Department's proof as to what sign-in time the Respondent entered in the log consists of Rashkovsky's analysis of actual sign-in log entries made by the Respondent (DX 1). When these start-of-tour-times are compared to

the time-of-day information as to when the Respondent's car Passed through the Yonkers toll plaza, I find that the evidence establishes that on six occasions between May 13, 2007 and September 3, 2007, the Respondent entered an inaccurate sign-in time.

For May 13, 2007, May 22, 2007, July 10, 2007, July 11, 2007, August 4, 2007, and August 7, 2007, the Respondent entered "2225" hours in the sign-in log as the time he started his tour. Since the Respondent's vehicle did not Pass through the Yonkers toll plaza until 2222 hours, 2214 hours, 2212 hours, 2211 hours, 2211 hours and 2211 hours, respectively, on those days (DX 1), the Respondent could not have signed in at 2225 hours on any of those six days.

### Conclusion

I find that the record establishes that during the charged time period of March 14, 2006 to September 3, 2007, the Respondent made inaccurate entries in the sign-in log as to what time he had arrived at 315 Hudson Street on a total of 21 dates. Thus, the Respondent is found Guilty of having made false entries in the sign-in log as to what time he had arrived at 315 Hudson Street; being late for his scheduled tour of duty; and having failed to submit Leave of Absence Reports (PD433-041) for these unauthorized latenesses, on a total of 21 occasions.

### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974). The Respondent was appointed to the Department on April 12, 1985. Information from his

personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found guilty of making false entries in Department records on 21 occasions over an 18 month period as to the time he actually arrived at work; being late for his scheduled tour of duty on 21 occasions; and failing to submit Leave of Absence Reports for these 21 unauthorized latenesses.

The Assistant Department Advocate (the Advocate) recommended that the Respondent be required to forfeit 30 vacation days. However, that penalty recommendation was based on the Advocate's position that the Respondent had made false entries as to what time he had arrived for his tour of duty, and was late for his scheduled tour of duty, on 56 occasions, not 21 occasions.

Although on March 6, 2007, the Respondent arrived at his command over 30 minutes later than the time he entered on his OT Report, on the other 20 occasions the Respondent was less than 30 minutes late for the start of his scheduled tour of duty and on a number of these occasions he was only 15 minutes or less late. These latenesses must be examined in light of the fact that the Respondent received a perfect attendance award for 15 years. Also, Rashkovsky confirmed that his review of the Respondent's time records revealed a number of occasions on which the Respondent had worked past the end of his tour but had not submitted a request to receive OT. Also, retired Deputy Inspector Brian O'Neill testified that he considered the Respondent to be an outstanding supervisor.

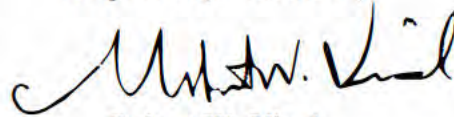
In Disciplinary Case No. 82580/07 (approved on November 20, 2008), a 17-year member with no prior disciplinary record forfeited 13 vacation days after he pleaded



guilty to arriving late to work on 16 occasions and failing to submit lost time sheets to document these 16 latenesses. However, in that case the member also directed his subordinates to sign him in and/or out on 21 occasions instead of signing for himself.

In consideration of the Respondent's overall record and the penalties that were imposed on two other Group 9 supervisors who acknowledged similar misconduct,<sup>2</sup> it is recommended that the Respondent be required to forfeit 15 vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner – Trials

**APPROVED**  
APR 27 2010  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

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<sup>2</sup> Captain McCarthy, who was charged with lateness and failure to supervise signed a Schedule A Command Discipline (CD) and forfeited two vacation days. Sergeant Meehan signed a Schedule B CD and forfeited five vacation days for being late for work on 34 occasions for a total of seven hours and 35 minutes late.

POLICE DEPARTMENT  
CITY OF NEW YORK

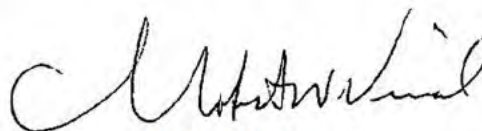
From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT CHRISTOPHER FARRELL  
TAX REGISTRY NO. 886850  
DISCIPLINARY CASE NO. 83773/08

The Respondent received an overall rating of 4.5 on his 2008 evaluation, 4.5 on his 2007 evaluation, and 4.5 on his 2006 evaluation.

He has been awarded two Meritorious Police Duty medals and 11 Excellent Police Duty medals. [REDACTED]

He has a prior disciplinary record. In 1987, he forfeited ten vacation days (with an additional five day penalty held in abeyance for one year) after he was found guilty of, while off duty, wrongfully grabbing a handcuffed prisoner, kicking the prisoner, banging the prisoner's head on a car causing serious injury, and banging his off duty revolver on a car.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner - Trials